



The Legislative Regulations of Trademarks in the UAE "A study of the laws of regulating the Trademarks in UAE, and the International laws and Punishments of who breaks these laws"

KEYWORDS

Registration Mark, Fraud, Copyright, TRIPS agreement, (WTO), Registration Symbols, International Law

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ABSTRACT

Islam has prohibited fraud and deception, as it is considered a breach of the principal of Islam and human values. The prohibition of Fraud in the UAE is prohibited from the Islamic point of view, and the obligation to prohibit the infringement on the Trademarks is considered also a type of cheating, and a fraud that, the Law in UAE is very clear in this regard, as it protects the trade mark holders and fights for their rights. This study will clearly investigate the laws in UAE regarding the infringements of the trademarks, explores the different types of business registrations and trademarks, and what are the punishments for those who break these laws. The implementation of these laws, will foster an environment that will encourage investors and foreign companies to invest in UAE, providing economic leverage, and diversification of sources of income in the economic globalization

Introduction:

Trademarks are considered a method of guarantee for both the product and the user as they prevent the confusion between products bearing specific trademarks with similar products that bear a different trademark in addition to building trust in the products of the producer. Producers have started using trademarks in order to identify their products among the increasing categories of goods and products and the emergence of similar products. Producers also aim to perfect their manufacturing in order to maintain their customers and the quality of their products which guarantees their survival against the competitors. Trademarks also play an important role in marketing and advertising policies that companies follow whether to promote themselves, their services or their products. These trademarks aid in one way or another in influencing on the customers and achieving a competitive advantage. The owner of a trademark may pursue legal action against trademark infringement. A lawsuit or a civil action brought in a court of law may lead to a dispute resolution of private law issues between individuals, business entities, or no-profit organizations. Most countries require formal registration of a trademark as a precondition for pursuing this type of action. The United States, Canada and other countries also recognize common law trademark rights, which means action can be taken to protect an unregistered trademark if it is in use. Individuals or businesses that misuse the trademarks or use them illegally will be punished depending on the laws of the contract, and the laws of the country in which they are practicing their businesses in. UAE has implemented strict laws on the individuals and businesses that misuse the trademarks. There are also international trademarks that are ruled by International law, or the countries that they are being used in. This study will discuss the trademarks and their laws, especially in the UAE, and focus on the penalties of the misuses of the trademarks

Trademarks:

A trademark is a recognizable sign, design or expression which identifies products or services of a particular source from those of others. The trademark owner can be an individual, business organization, or any legal entity. A trademark may be located on a package, a label, a voucher or on the product itself. Trademarks are usually utilized to claim exclusive properties of products or services. The usage of trademarks by its owner can cause legal issues if this usage makes him guilty of false advertising or if the trademark is odious. Trademarks can be either owned or licensed. For example: Many toy suppliers are licensees. The unauthor-

ized usage of trademarks by producing and trading counterfeit consumer goods is known as brand piracy.

The Registered Trademark Symbols:

The registered trademark symbol is designated by ® (the circled capital letter R), which is a symbol used to provide notice that the preceding mark is a trademark that has been registered with a national trademark office. In some countries it is against the law to use the registered trademark symbol for a mark that is not officially registered in any country. However, trademarks that are not officially registered are marked instead with the trademark symbol. The proper way to display these symbols is immediately following the mark, and is commonly in superscript style, which is a number, figure, symbol, or indicator that appears smaller than the normal line of type and is set slightly below or above the baseline, but is not legally required. Related symbols:

- The trademark symbol ™, used for unregistered trademarks
- The similar copyright symbol ©.
- The similar sound recording copyright symbol.
- The similar Orthodox Union the hechsher symbol, featuring a U instead of an R in the circle.

Trademark Definitions in UAE:

The trademark is any distinguished form of names, words, signatures, letters, figures, graphics, logos, titles, hallmarks, seals, pictures, patterns, announcements, packs or any other marks or group of marks if they were used or intended to be used either to distinguish goods, products or services from whatever sources or to indicate that certain services, goods or products belong to the owner of the trademark because of their provision, manufacturing, selection or trading. The voice accompanying a trademark is considered a part of it.

UAE Trademark Law:

According to Federal Law No: (37) Of 1992 on trademark law, which was issued by Late Sheikh Zayed bin Sultan Al Nahyan, who recognized the importance and the benefits of trademark protection for a prosperous local economy. The previous law, which were amended by Law No: (19) Of 2000 and Law No: (8) Of 2002, provided protection for registered trademarks in the UAE and aimed to safeguard the interests of both businesses and consumers in the country. The law includes the definition of trademarks, signs that cannot be registered as trademarks, trademark registration and cancellation procedures, transfer of ownership and mortgage of

trademarks, licensing others to use trademarks, penalties for trademark law infringement and general and transitory provisions.

Articles of the Law:

According to the ministry of foreign trade, some of the main articles of the trademark law include: Article (19) The period of protection provided by the registration of a trademark is ten years which can be renewed for a successive period of ten years by submitting an application within the last year of the protection period in accordance with the terms and conditions set by this law and its executive regulations. Article (20) The Ministry can remove a registered trade mark forthwith after notifying the concerned party about the reasons for removal, listening to their explanations and considering their defense. The affected parties can appeal the removal decision at the relevant civil court within 30 days from the date of notification about the removal. Articles (37) and (38) Articles (37) and (38) details the penalties for violating the trademark law. The following acts will invite an imprisonment and/or a fine of at least AED 5,000:

1. Forging or imitating a trademark registered according to the law in a way that misleads the public who use goods and services distinguished by the original trademark. The same applies to all who deliberately use a forged or imitated trademark.
2. Using a registered trademark owned by a third party or placing it illegally and with bad intention on the products.
3. Deliberate sale, display, promotion or possession (with the intent of selling) of products with forged, imitated or illegally placed trademark.

In addition, article (38) gives a jail term not exceeding one year and a fine of not less than AED 5,000 and not more than AED 10,000 or one of these penalties to anyone who uses a trademark that may not be registered as per the provision of this law or illegally writes statements on trademarks or commercial documents giving a false impression that the person holds a registered trademark.

UAE International Trade Laws:

The UAE tightened export control laws and placed enforcements to prevent the movement of unlawful goods and materials across its borders. In August 2007, the UAE government positioned a stringent export control law that includes stiff penalties for parties involved in the diversion of controlled shipments. Federal Law Number 13 of 2007, addressing commodities subject to import and export control procedures, does the following:

- Authorizes government bodies to restrict or ban the import, export or re-export of goods deemed a threat to the UAE's national security, foreign policy, natural resources, public health and safety, or the environment.
- Bans the export or re-export of strategic goods, including arms and military hardware, chemical and biological materials, and dual-use items without a special license.
- Establishes a National Commission with clear oversight and management responsibility for UAE export control procedures. This Commission has the ability to categorize goods and technologies as strategic and controlled, if they can be used for military purposes or in conventional weapons or weapons of mass destruction.
- Specifies penalties, up to imprisonment for one year and/or fines totaling over US \$270,000.

As a result of the law, the UAE has shut down about two dozen international and local companies involved in money laundering and proliferation of dual-use and dangerous materials banned under the Nonproliferation Treaty and under multiple UN resolutions. In 2008 alone, the UAE interdicted or seized numerous sensitive shipments bound for Iran that could be used for the manufacture of weapons systems. This included specialized aluminum sheets, titanium, high-speed

computers and sophisticated machine tools. In September 2008, the UAE amended the export control law to reinforce its implementation.

International Trademarks:

International Trademarks provide worldwide protection and a uniform registration, instead of having to have different national trademarks. It is not necessary to have a trademark representative in each national state. However, the International registration is much faster to obtain than the registration of a community trademark and considerably cheaper than the registration of respective national trademarks. The major disadvantage of obtaining an International Trademark is that it takes a long time to obtain due to registration process.

Conditions of Registering Trademarks:

1. Unique character identity

The trademark must have a special identity that differentiates it and makes it unique from other trademarks used to distinguish goods or products. Also, the trademark must have an innovative characteristic which makes the external appearance exclusive. This is an important factor as trademarks that lack the innovative characteristic make it difficult for the consumers to identify the goods as being exceptional, in addition to making it difficult to protect its owner from other competitors.

2. External unique characteristic

Trademarks should be different than other registered trademarks of similar products or services. In other words, the trademark must be new in application on those products or services and cannot be identical or similar to other trademarks to an extent that it misleads the costumers. The similarities between the trademarks that lead to rejection of registration do not have to be identical but instead sufficient to cause confusion to an average careful regular consumer in regular purchasing conditions.

3. Legality

A trademark may not be registered or considered a trademark if it contains any prohibited elements or shapes such as those that may be indecent, in violation of the general order, general logos of countries, flags, pure religious symbols, red cross symbol, or geographic names if using them may cause confusion as to the origin of the products or services in addition to trademarks that include false information about the description of the goods.

Penalties of Breaking the Trademark laws in UAE:

Article (37) States that any person who commits any of the following acts shall be punished by an imprisonment and by a fine not less than (5000) five Thousand U.A.E. Dirhams, or by one of those penalties: (1) Whoever counterfeits a trademark, which is lawfully registered or imitates it in such a manner as to mislead the public, or uses in mala fide a counterfeited or an imitated trademark. (2) Whoever unlawfully uses a registered trademark owned by another party. (3) Whoever puts, in mala fide, a registered trademark owned by another party, on his products. (4) Whoever sells or offers for sale or circulation or possesses for the purpose of sale, products bearing a counterfeited or an imitated trademark, or unlawfully put, with his recognition. (5) Whoever intentionally offers rendering services under a forged, imitated or unlawfully used trademark. According to Article (43) The court may, in any civil or criminal case, order the confiscation of the seized things or which may be seized later, and deduct their price from the fines or compensations, or for the disposal thereof in any other manner deemed fit by the court. The court also may order the destruction of the unlawful marks, or, if necessary, order the destruction of the products, envelopes, packing materials and other things which bear such marks or bear illegal statements, and machines and instruments used in particular in the act of counterfeit. The court may order all the above actions even in the case of acquittal. The court

may also order the publication of the judgment in the Official Gazette or in one of the daily newspapers at the expense of the convict.

TRIPS Agreement:

The Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) is an International agreement administered by World Trade Organization (WTO) that sets down minimum standards for many forms of intellectual property (IP) regulation as applied to nationals of other WTO Members. It was negotiated at the end of the Uruguay Round of the General Agreement on tariffs and Trade (GATT) in 1994. The TRIPS agreement introduced intellectual property law into the international trading system for the first time and remains the most comprehensive international agreement on intellectual property to date. In 2001, developing countries, concerned that developed countries were insisting on an overly narrow reading of TRIPS, initiated a round of talks that resulted in the Doha Declaration. The Doha declaration is a WTO statement that clarifies the scope of TRIPS, stating for example that TRIPS can and should be interpreted in light of the goal "to promote access to medicines for all." TRIPS require WTO members to provide copyright rights. Copyright: is a legal concept, enacted by most governments, giving the creator of an original work exclusive right to it, usually for a limited time. Generally, it is "the right to copy". But also gives the copyright holder the right to be credited for the work, to determine who may adapt the work to other forms which may perform the work that may financially benefit from it, and other related rights. It is a form of intellectual property like the patent, the trademark. Applicable to any expressible form of an idea or information, that is substantive and discrete. Protection and enforcement of all intellectual property rights shall meet the objectives to contribute to the promotion of technological innovation and to the transfer

and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations

Conclusion:

Trademark strength, properly understood, refers to the scope of protection afforded a trademark by courts based on: (1) the mark's tendency to signify to consumers a consistent source of the products to which the mark is affixed; and (2) the mark's ability to influence a consumer's purchasing decisions. The stronger the mark, the more uses the mark's owner may exclude from the marketplace through a trademark infringement or dilution action. Trademarks are the most important means of circulation of goods and they are considered effective components in the commercial market. The rapid economic and commercial development at UAE has led to the growing importance of brand which resulted in increased types of infringement, forcing the government to enforce laws to provide legal protection to the individuals and the businesses. The prohibition of Fraud in the UAE is also prohibited from the Islamic point of view and the Law in UAE is very clear in this regard, as it protects the trade mark holders and fights for their rights. The trademark is given two types of protection: The protection provided by the law in UAE, and the protection established by the International conventions. Having these laws in UAE will attract more foreign investors and companies to invest in UAE economy knowing that their rights will be protected against infringements or misuse of the trademarks. The sophisticated legislative system in the UAE as well as court rulings make UAE a safe place to invest and will promote the economic diversification as well as the globalized economies

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